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4 UNITED STATES DISTRICT COURT
5 DISTRICT OF NEVADA

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7 CARRINGTON MORTGAGE SERVICES,
8 LLC, a California corporation,

9 Plaintiff,

10 v.

11 DEVONRIDGE HOMEOWNERS
12 ASSOCIATION, INC., a Nevada corporation;
13 SFR INVESTMENTS POOL 1, LLC, a
14 Nevada limited liability company,

15 Defendants.

16 DEVONRIDGE HOMEOWNERS
17 ASSOCIATION, INC., a Nevada corporation;

18 Third-Party Plaintiff,

19 v.

20 NEVADA ASSOCIATION SERVICES,
21 INC.,

22 Third-Party Defendant.

Case No. 2:17-cv-01837-RFB-VCF

ORDER

23 **I. INTRODUCTION**

24 Before the Court are three contested motions: Defendant SFR Investments Pool 1, LLC's
25 Motion to Dismiss, ECF No. 33; SFR's Motion for Summary Judgment, ECF No. 39; and Plaintiff
26 Carrington Mortgage Services's Motion for Summary Judgment, ECF No. 37.

27 **II. PROCEDURAL BACKGROUND**

28 This matter arises from a nonjudicial foreclosure sale conducted by a homeowners'
association under Nevada Revised Statutes ("NRS") Chapter 116 in 2013. ECF No. 1.

1 Carrington sued SFR and Devonridge Homeowners Association, Inc. (“the HOA”) on July
2 5, 2017. Id. Carrington alleged two claims: (1) quiet title or declaratory relief against all
3 Defendants and (2) unjust enrichment against SFR. Id. Carrington filed a notice of lis pendens on
4 July 6, 2017. ECF No. 5.

5 The HOA answered the complaint on August 11, 2017. ECF No. 11. It then filed a third-
6 party complaint against Nevada Association Services, Inc. (“NAS”) on September 7, 2017. ECF
7 No. 13.

8 After SFR moved to dismiss the complaint on January 2, 2018, ECF No. 20, the Court
9 stayed the matter pending the Nevada Supreme Court’s decision on a certified question and denied
10 all pending motions without prejudice to refiling. ECF No. 25. The Nevada Supreme Court issued
11 its decision in August 2018.

12 The HOA was dismissed from this matter on May 8, 2018 per stipulation. ECF Nos. 26,
13 27. NAS was then voluntarily dismissed. ECF No. 28.

14 SFR now moves again to dismiss the complaint and moves for summary judgment. ECF
15 Nos. 33, 39. Carrington opposed the motions, and SFR replied. ECF Nos. 35, 36, 40, 43.

16 Carrington also moves for summary judgment. ECF No. 37. SFR opposed the motion,
17 and Carrington replied. ECF Nos. 41, 42.

18 19 **III. MOTION TO DISMISS**

20 The Court first turns to the pending motion to dismiss.

21 **a. Factual Background**

22 The Complaint alleges the following:

23 This matter concerns the property at 813 Pirates Cave Court, North Las Vegas, Nevada
24 89032. ECF No. 1. The HOA manages and maintains the common unit amenities for the
25 community in which the property sits.

26 On October 7, 2008, nonparty Andrea Ketay purchased the property for \$194,761.00 by
27 executing a promissory note in favor of Taylor, Bean & Whitaker Mortgage Corp. Ketay also

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1 executed a corresponding deed of trust, which was recorded on October 10, 2008. The deed of
2 trust encumbers the property as security to ensure repayment of the loan.

3 Ketay defaulted on both the loan and the payment of homeowners' association dues. Based
4 on the delinquent homeowners' association dues, nonparty Bank of America requested a super-
5 priority lien account statement from NAS in April 2011. NAS served as the HOA's agent. Bank
6 of America made the request through its attorneys at the law firm of Miles, Bauer, Bergstrom &
7 Winters, LLP.

8 Bank of America requested the super-priority lien account statement for the express
9 purpose of curing the super-priority portion of HOA's lien. NAS refused to provide a super-priority
10 lien statement, instead providing a full lien account statement showing a balance of \$2,231.31.
11 Based on the full lien statement, the law firm calculated the super-priority portion of the HOA's
12 lien by totaling nine months of homeowners' association dues, pursuant to NRS 116.3116.

13 The law firm tendered a cashier's check for the super-priority lien amount to NAS to cure
14 the super-priority portion of the lien. The tender of the super-priority lien amount to NAS served
15 to extinguish that portion of HOA's lien, leaving only the portion of HOA's lien which is junior
16 to Carrington's first deed of trust.

17 On October 7, 2011, all beneficial interests under the deed of trust were assigned to
18 Nonparty Bank of America, NA.

19 On August 23, 2013, the HOA sold the property at an auction through its agent, Nevada
20 Association Services, Inc. ("NAS"). SFR purchased the property for \$14,000.00.

21 On April 17, 2017, all beneficial interests under the deed of trust were then assigned to
22 Carrington.¹

23 **b. Legal Standard**

24 In order to state a claim upon which relief can be granted, a pleading must contain "a short
25 and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P.
26 8(a)(2). In ruling on a motion to dismiss for failure to state a claim, "[a]ll well-pleaded allegations

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28 ¹ The Court takes judicial notice of the publicly recorded documents related to the deed of
trust and the foreclosure sale. Fed. R. Civ. P. 201 (b), (d); see also Lee v. City of Los Angeles,
250 F.3d 668, 690 (9th Cir. 2001) (judicially noticing undisputed matters of public record).

1 of material fact in the complaint are accepted as true and are construed in the light most favorable
2 to the non-moving party.” Faulkner v. ADT Security Servs., Inc., 706 F.3d 1017, 1019 (9th Cir.
3 2013). To survive a motion to dismiss, a complaint must contain “sufficient factual matter,
4 accepted as true, to state a claim to relief that is plausible on its face,” meaning that the court can
5 reasonably infer “that the defendant is liable for the misconduct alleged.” Ashcroft v. Iqbal, 556
6 U.S. 662, 678 (2009) (citation and internal quotation marks omitted). Additionally, Federal Rule
7 of Civil Procedure 12 also permits a party to move to dismiss a complaint for “failure to join a
8 party under Rule 19.” Fed. R. Civ. P. 12(b)(7).

9 c. Discussion

10 SFR moves to dismiss the complaint, arguing that: the claims are time barred by a three-
11 year statute of limitations; declaratory relief is not an independent cause of action; the unjust
12 enrichment claim fails as a matter of law; Carrington failed to notify the Nevada Attorney General
13 of its constitutional challenge to NRS 116.3116 in violation of Rule 5.1; and Carrington failed to
14 join necessary parties in violation of Rule 19 and NRS 30.130. The Court addresses each argument
15 in turn.

16 i. Statute of Limitations

17 SFR first argues to dismiss the complaint as time barred by the three-year statute of
18 limitations at NRS 11.190(3), contending that Carrington asserts claims based only on statutory
19 liabilities created by NRS Chapter 116. Carrington argues that its first claim is entitled to a five-
20 year statute of limitations under NRS 11.070 and NRS 11.080. Carrington also argues that the
21 five-year statute of limitations began to run on September 18, 2014 when the Nevada Supreme
22 Court issued SFR Investments Pool 1, LLC v. U.S. Bank, N.A., 334 P.3d 408 (Nev. 2014) (holding
23 NRS Chapter 116 creates a super-priority lien). Carrington also contends that its unjust enrichment
24 claim is entitled to a four-year statute of limitations.

25 Accepting the allegations in the complaint as true, the Court determines whether “the
26 running of the statute is apparent on the face of the complaint.” Huynh v. Chase Manhattan Bank,
27 465 F.3d 992, 997 (9th Cir. 2006) (citation omitted). A complaint may be dismissed as untimely
28 only where “it appears beyond doubt that the plaintiff can prove no set of facts that would establish

1 the timeliness of the claim.” Supermail Cargo, Inc. v. United States, 68 F.3d 1204, 1207 (9th Cir.
2 1995). For statute of limitations calculations, time is computed from the day the cause of action
3 accrued. Clark v. Robison, 944 P.2d 788, 789 (Nev. 1997). The Court considers the parties’
4 arguments regarding statutes of limitations as applied to each claim below.

5 *1. Claim One – Declaratory Relief or Quiet Title*

6 The Court finds that the statute of limitations as to claim one began to run on the date of
7 the foreclosure sale: August 23, 2013. Contrary to Carrington’s argument, the claim did not accrue
8 on September 18, 2014, the date of the Nevada Supreme Court decision in SFR Investments Pool
9 1 v. U.S. Bank. The Nevada Supreme Court has held that SFR Investments applies retroactively
10 and constitutes an interpretation of NRS 116.3116 rather than a change in law. K&P Homes v.
11 Christiana Trust, 133 Nev. Adv. Op. 51 (July 27, 2017). Because NRS 116.3116 was in effect at
12 the time of the foreclosure sale, the Court finds that Carrington’s claim for declaratory relief or
13 quiet title accrued at the time of the foreclosure.

14 The Court further finds that Carrington is not entitled to the five-year statute of limitations
15 for quiet title actions under NRS 11.070 and 11.080. The statute of limitations provided by these
16 sections apply only when the plaintiff actually “seized or possessed of the premises.” Nev. Rev.
17 Stat. §§ 11.070, 11.080; see also Saticoy Bay LLC Series 2021 Gray Eagle Way v. JPMorgan
18 Chase Bank, N.A., 388 P.3d 226, 232 (Nev. 2017) (NRS 11.080); Bissell v. Coll. Dev. Co., 469
19 P.2d 705, 707 (Nev. 1970) (NRS 11.070). NRS 11.070 and 11.080 do not apply to claims by
20 parties like Carrington that held only a lien interest rather than a title interest.

21 The Court next finds that Carrington’s claim carries a three-year statute of limitations under
22 NRS 11.190(3) insofar as it relates to any rights protected by NRS 116.3116. NRS 11.190(3)(a)
23 (applying a three-year statute of limitations to actions upon liability created by statute). Because
24 Carrington filed suit over three years after the foreclosure sale, the Court dismisses Carrington’s
25 claim to the extent that it relies on NRS 116 violations.

26 However, the Court finds that Carrington’s claim may proceed on the theory of a
27 constitutional violations and on an equitable claim related to the foreclosure. NRS 11.220, the

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1 catch-all provision for claims not based in tort, statutory liabilities, or contract, has a four-year
2 statute of limitations.

3 The Court notes that the timeline for tendering the super-priority lien is codified at NRS
4 116.31162. But “[t]he phrase ‘liability created by statute’ means a liability which would not exist
5 but for the statute.” Torrealba v. Kesmetis, 178 P.3d 716, 722 (Nev. 2008) (quoting Gonzalez v.
6 Pacific Fruit Express Co., 99 F. Supp. 1012, 1015 (D. Nev. 1951)). Tender thus raises equitable
7 considerations irrespective of the statutory scheme.

8 Based on the forgoing, the Court finds the first claim proceeds on the theories of: due
9 process violations; commercial unreasonableness regarding the manner in which the sale was
10 conducted, creating an inequitable sale price; and commercial unreasonableness regarding the
11 allegedly improper calculation of the super-priority lien amount. The claim is dismissed as to the
12 liabilities expressly created by NRS Chapter 116.

13 2. *Claim Two – Unjust Enrichment*

14 Turning to claim two, the Court finds the four-year statute of limitations in NRS 11.220
15 applies to the unjust enrichment claim. Nev. Rev. Stat. 11.220 (applying a four-year statute of
16 limitations to claims not based in tort, statutory liabilities, or contract).

17 ii. Declaratory Relief as Stand-Alone Claim

18 SFR next argues that the first claim must be dismissed because declaratory relief is a type
19 of remedy rather than a stand-alone claim. SFR contends that the claim, while disguised under the
20 title of declaratory relief, actually asserts a wrongful foreclosure claim and a claim for liabilities
21 arising under a statute.

22 Carrington asserts its claim under the Declaratory Judgment Act, 28 U.S.C. §§ 2201–2202.
23 The Act creates a remedy, providing: “[i]n a case of actual controversy within its jurisdiction ...
24 any court of the United States ... may declare the rights and other legal relations of any interested
25 party seeking such declaration, whether or not further relief is or could be sought.” Id. § 2201(a).

26 SFR relies on a statement from the Ninth Circuit to argue the claim cannot proceed as a
27 stand-alone claim. The Ninth Circuit held that the Act “only creates a remedy and is not an
28 independent basis for jurisdiction. To obtain declaratory relief in federal court, there must be an

1 independent basis for jurisdiction.” Stock W., Inc. v. Confederated Tribes of the Colville
2 Reservation, 873 F.2d 1221, 1225 (9th Cir. 1989). Thus, under the Ninth Circuit’s decision, the
3 Act itself cannot create federal jurisdiction, but the Ninth Circuit did not hold that the Act was not
4 a stand-alone claim. To be sure, an independent basis for jurisdiction exists in this matter: diversity
5 jurisdiction under 28 U.S.C. § 1332. And there are remaining claims regarding which this Court
6 will have to make findings or declarations. This claim may therefore proceed in conjunction with
7 the first claim.

8 iii. Unjust Enrichment

9 SFR also contends that Carrington’s claim for unjust enrichment fails as a matter of law.
10 In the complaint, Carrington alleges that SFR has been unjustly enriched because it has retained
11 the entirety of rents obtained after the foreclosure sale despite Carrington being entitled to portions
12 of the rents under NRS 107A.160 to 107A.170. SFR moves to dismiss the claim for two reasons.
13 First, SFR argues the claim depends on an order setting aside the foreclosure sale and is therefore
14 foreclosed since Carrington’s claim to set aside the foreclosure sale is time-barred. Second, SFR
15 argues that Carrington is not entitled to rents under NRS 107A since the claim held merely a lien
16 interest to enforce the note; the property never belonged to Carrington.

17 The Court has already found that claim one is not barred by the statute of limitations. Thus,
18 SFR’s first argument fails.

19 As to the second argument, the Court finds the parties have inadequately briefed
20 Carrington’s right to rents under NRS Chapter 107A. The Court therefore denies the motion to
21 dismiss on this basis.

22 iv. Rule 5.1

23 SFR next argues that Carrington violated Rule 5.1 by failing to notify the Nevada Attorney
24 General. Rule 5.1 states:

25 A party that files a pleading, written motion, or other paper drawing into question
26 the constitutionality of a federal or state statute must promptly: (1) file a notice of
27 constitutional question stating the question and identifying the paper that raises it,
28 if: ... a state statute is questioned and the parties do not include the state, one of its
agencies, or one of its officers or employees in an official capacity; and (2) serve
the notice and paper on the ... state attorney general if a state statute is questioned—

1 either by certified or registered mail or by sending it to an electronic address
2 designated by the attorney general for this purpose.

3 However, Carrington file a notice of the Nevada Attorney General's acknowledgement of
4 receiving a copy of the complaint that challenges the constitutionality of NRS Chapter 116. See
5 ECF No. 10. Carrington therefore complied with Rule 5.1

6 v. Rule 19 and NRS 30.130

7 SFR finally moves to dismiss the complaint, arguing that Ketay is a necessary and
8 indispensable party under Rule 19 and that failing to name the Ketay violates NRS 30.130.

9 Under Rule 19, a party shall be joined where:

10 (A) in that person's absence, the court cannot accord complete relief among existing
11 parties; or (B) that person claims an interest relating to the subject of the action and
12 is situated that disposing of the action in the person's absence may: (i) as a practical
13 matter impair or impede the person's ability to protect the interest; or (ii) leave an
 existing party subject to a substantial risk of incurring double, multiple, or
 otherwise inconsistent obligations because of the interest."

14 Fed. R. Civ. P. 19(A). Further, NRS 30.130 states, in part: "When declaratory relief is sought, all
15 persons shall be made parties who have or claim any interest which would be affected by the
16 declaration, and no declaration shall prejudice the rights of persons not parties to the proceeding."

17 The Court finds that both Ketay and the HOA are necessary parties because Carrington
18 seeks, as one option of relief, to set aside the foreclosure sale. If the Court were to issue an order
19 voiding the sale, the order could reinstate the Ketay's interest in the property as well as the HOA's
20 lien interest in the property.

21 However, the Court declines to dismiss the matter under Rule 19 or NRS 30.130 because
22 SFR has not shown that joinder or amendment is not feasible and because the legal issue of joining
23 these parties to case was not fully briefed before this Court. The Court denies the motion to dismiss
24 accordingly. If Carrington does not seek to add these indispensable parties within twenty-one
25 days, the Court grants SFR leave to file a supplemental motion to dismiss on this point.

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